

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Huse Revocable Trust, John J. Huse,  
Co-Trustee,  
Appellant,

v.

Dakota County Board of Equalization,  
Appellee.

Case Nos: 13A 125, 13A 126 & 13A 127

**ORDER FOR DISMISSAL WITH  
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

**I. PROCEDURAL HISTORY**

A jurisdictional show cause hearing was held on November 7, 2013. John J. Huse, Co-trustee of the Huse Revocable Trust appeared telephonically at the hearing before the Commission (Taxpayer). Kimberly Watson, Dakota County Attorney, appeared telephonically on behalf of the Dakota County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

**II. STANDARD OF REVIEW**

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.<sup>1</sup> Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.<sup>2</sup> Parties cannot confer subject matter

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<sup>1</sup> See, Neb. Rev. Stat. 77-5013 (2012 Cum. Supp.).

<sup>2</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.<sup>3</sup>

### III. ANALYSIS

On September 3, 2013, the Commission received an envelope containing three appeals of the determinations of the County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).<sup>4</sup> The deadline for filing appeals of these determinations for tax year 2013 was on or before August 24, 2013, since the county had not adopted a resolution to extend the deadline for hearing protests.<sup>5</sup> An appeal to the Commission is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the Commission, or received by the Commission on or before the date specified by law for filing the appeal.<sup>6</sup> The envelope containing the appeal was postmarked August 29, 2013, and received by the Commission on September 3, 2013.<sup>7</sup> Therefore, the Commission determines that the appeal was not timely filed.

The Taxpayer requested that if the Commission finds that it does not have jurisdiction that the Commission return the filing fees paid. Based on the unique nature of the pleadings and evidence in these appeals the Commission finds that the Taxpayer's filing fees should be refunded.

### IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeals.

### V. ORDER

#### **IT IS THEREFORE ORDERED THAT:**

1. The above captioned appeals are dismissed with prejudice.
2. This decision, if no appeals are filed, shall be certified within thirty days to the Dakota County Treasurer, and the officer charged with preparing the tax list for Dakota County as follows:

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<sup>3</sup> *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

<sup>4</sup> See, Case File.

<sup>5</sup> Neb. Rev. Stat. §77-1510 (Reissue 2009).

<sup>6</sup> Neb. Rev. Stat. 77-5013(2) (2012 Cum. Supp.).

<sup>7</sup> See, Case File.

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as required by Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

**SIGNED AND SEALED** February 3, 2014.

**Seal**

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Robert W. Hotz, Commissioner

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Nancy J. Salmon, Commissioner